

AO 106 (Rev. 04/010) Application for Search Warrant

AUTHORIZED AND APPROVED/DATE: wm 7/8/22

## UNITED STATES DISTRICT COURT

FILED

WESTERN

for the  
DISTRICT OF

OKLAHOMA JUL - 8 2022

In the Matter of the Search of )  
 (Briefly describe the property to be search )  
 Or identify the person by name and address )  
 PERSON KNOWN AS: )  
 MARCUS KELLY SMITH )  
 DOB: xx/xx/1984 )

Case No: M-22-

497

-SM

CARMELITA REEDER SHINN, CLERK  
 U.S. DIST. COURT, WESTERN DIST. OKLAHOMA  
 BY: [Signature], DEPUTY

## APPLICATION FOR SEARCH WARRANT

I, a federal law enforcement officer or attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following (*identify the person or describe property to be searched and give its location*): PERSON KNOWN AS MARCUS KELLY SMITH, black male, DOB XX-XX-84 and, SSN XX-XX-4958

The person to be searched, described above, is believed to conceal: DNA sample in the form of a buccal swab on the inside of the cheeks of Marcus Kelly Smith

Located in the Western District of Oklahoma, there is now concealed (*identify the person or describe the property to be seized*):

See Attachment B.

The basis for the search under Fed. R. Crim.P.41(c) is(*check one or more*):

- ☒ evidence of the crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

*Code Section*

*Offense Description*


18 U.S.C. § 922(g)(1)

Felon in Possession of Firearm

The application is based on these facts:

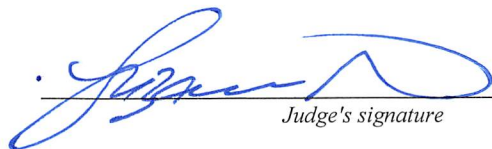
See attached Affidavit.

☒ Continued on the attached sheet(s).  
☐ Delayed notice of \_\_\_\_\_ days (*give exact ending date if more than 30 days* \_\_\_\_\_) is requested  
under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet(s).

  
\_\_\_\_\_  
JOSEPH KEYES, Special Agent, FBI

Sworn to before me and signed in my presence.

Date: July 8, 2022

  
\_\_\_\_\_  
*Judge's signature*

City and State: Oklahoma City, Oklahoma

SUZANNE MITCHELL, U.S. Magistrate Judge  
*Printed name and title*

**ATTACHMENT A**

**DESCRIPTION OF THE PERSON TO BE SEARCHED**

This warrant applies to the person of **MARCUS KELLY SMITH**, date of birth XX-XX-1984 and social security number XXX-XX-4958. **MARCUS KELLY SMITH** is listed on his Oklahoma Driver's License as being 6'-0" tall, weighing 170 pounds and having brown eyes. **MARCUS KELLY SMITH** is described above and pictured below:



**ATTACHMENT B**

**ITEMS TO BE SEARCHED AND SEIZED**

The following materials, which constitute evidence of the commission of a criminal offense, namely violations of Title 18, United States Code, Section 2113(a) Bank Robbery:

A known sample of Deoxyribonucleic Acid (DNA) by buccal (cheek) swab collected by use of a sterile swab of the inner cheeks of the mouth of the person to be searched, **MARCUS KELLY SMITH**, described in **Attachment A**, as this DNA sample may constitute evidence of violations of the aforementioned crime.

**AFFIDAVIT IN SUPPORT OF  
APPLICATION FOR SEARCH WARRANT**

I, Special Agent Joseph Keyes being duly sworn, depose and state as follows:

**INTRODUCTION**

1. I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI) and have been so employed since June of 2012. I am currently assigned to the Violent Crime Squad of Oklahoma City Division of the FBI. As a Special Agent with the FBI, I am a law enforcement officer of the United States as defined by 18 U.S.C. § 2510(7), meaning that I am empowered by law to conduct investigations of and to make arrests for violations of Federal law, including bank robberies. During my time as a Special Agent, I have participated in numerous criminal investigations, complex drug conspiracies, firearm related crime, fugitive location, kidnappings, and numerous other violations. I have also received significant training in criminal investigations, including investigations into violent crimes.

2. Furthermore, I am a federal law enforcement officer who is engaged in enforcing the criminal laws of the United States, including 18 U.S.C. §§ 924(g)(1) (felon in possession of a firearm). I am authorized to investigate violations of the laws of the United States, and to execute warrants issued under the authority of the United States.

3. This affidavit is made in support of an application for a warrant to search and obtain a Deoxyribonucleic Acid (DNA) sample by buccal (cheek) swab from the person of **MARCUS KELLY SMITH**, described in **Attachment A**, as this DNA sample may constitute evidence of violations of Title 18, United States Code, Section 922(g)(1),

felon in possession of a firearm. This DNA sample is necessary for comparison to DNA evidence collected from Ruger pistol model P95, a 9mm Luger, bearing serial number 315-17797.

4. The statements contained in this affidavit are based, in part, on information provided by other agencies, written reports about this and other investigations that I have received, directly or indirectly, from other law enforcement agents, my own independent investigation, and my experience, training, and background as a Special Agent with the FBI. Because this affidavit is being submitted for the limited purpose of securing authorization for the requested search warrant, I have not included each and every fact known to me concerning this investigation. Instead, I have set forth only the facts that I believe are necessary to establish that evidence of a crime in violation of 18 U.S.C. § 922(g)(1) (felon in possession of a firearm), are presently located on the person of **MARCUS KELLY SMITH**.

**INVESTIGATION INTO MARCUS KELLY SMITH**

5. On June 7, 2022, at approximately 10:11 a.m., Oklahoma City 911 dispatch received a call from a female later identified as Precious Berry. Berry was in distress and claiming that her boyfriend (later identified as **SMITH**) had choked her and put a gun to her head. Berry stated she escaped and was two houses down from her residence located at 8100 NW 78<sup>th</sup> Terrace, Oklahoma City, Oklahoma. Berry was requesting police assistance and stating that **SMITH** had also made suicidal statements. Oklahoma City Police Department (OCPD) officers responded to the area, and while interviewing Berry (who reiterated that **SMITH** held a gun to her head) witnessed

**SMITH** walking in the area. When **SMITH** noticed the police, he began to run and proceeded to climb over several neighborhood fences to get away. Officers were able to detain **SMITH** a short time later. **SMITH** did not have a firearm on him when detained by officers.

6. OCPD officers talking with Berry obtained consent to search her residence to locate the referenced gun used in the assault. Inside the residence, under a couch in the master bedroom, officers found a Ruger P95 bearing serial number 315-17797. Berry identified that pistol as belonging to **SMITH**.

7. Additionally, the investigation has revealed that **SMITH** is a convicted felon prior to this incident occurring. Furthermore, a nexus examination of the firearm indicated this weapon was not manufactured in Oklahoma and therefore would have had to cross State lines to reach the State of Oklahoma and affected interstate commerce.

#### **BACKGROUND ON DNA AS A FORM OF EVIDENCE**

8. Based on my training and experience, I know that deoxyribonucleic acid (DNA) is a genetic material which has become widely accepted as one of the most reliable ways of identifying an individual person based on DNA found in many bodily substances including but not limited to blood, semen, skin cells, and saliva. Based on my training and experience, I know that it is possible and likely to transfer DNA onto most items that a person touches or otherwise comes into contact with, including a firearm. If DNA is located on the firearm and is collected, it can then be compared a “known sample,” or DNA that was known to be collected from a specific person, such as **SMITH**. If the collected sample’s DNA profile is compared with a known sample’s

DNA profile, it may be determined whether the two come from the same source (same person) within a given degree of probability.

#### **COLLECTION OF A KNOWN DNA SAMPLE FROM A PERSON**


9. The collection of a known DNA sample from **SMITH** for the purposes of this criminal investigation will be performed using a buccal swab. The buccal swab typically consists of a handle with a tip made of a type of foam or other material, similar to a Q-tip. The buccal swab comes in a sterile wrapper to prevent contamination from outside materials. Use of the buccal swab involves swabbing the inside of a person's cheeks for several seconds, resulting in a collection of biological material containing DNA, while ensuring the swab is not contaminated by other materials. The buccal swab is then placed in a package which protects it from contamination. Based on my training and experience, I know the buccal swab process to be minimally invasive to the person from whom the sample is taken. The retrieval of a DNA sample from **SMITH** will allow forensic comparison against the DNA recovered from the above-mentioned firearm, which was recovered from the scene of the assault and swabbed by OCPD for DNA.


#### **CONCLUSION**

10. Based on the facts and circumstances set forth herein, I make this affidavit in support of an application for a warrant to search and seize a Deoxyribonucleic Acid (DNA) sample by buccal (cheek) swab from the person of **MARCUS KELLY SMITH**, described in **Attachment A**, as his DNA sample may constitute evidence linking him to violations of Title 18, United States Code, Section 922(g)(1), felon in possession of a firearm. Therefore, I request the Court allow me and other law enforcement officers to take two



buccal swabs and, using the normally accepted forensic manner, collect DNA samples from **SMITH**, and then perform testing on the samples in a lab located in Oklahoma County, Oklahoma, or some other location to compare **SMITH's** DNA to the DNA recovered from the referenced firearm.

  
\_\_\_\_\_  
Joseph Keyes, Special Agent  
Federal Bureau of Investigation

Subscribed and sworn to before me this  day of July, 2022.

  
\_\_\_\_\_  
SUZANNE MITCHELL  
United States Magistrate Judge

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